IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.04.2006

Coram:

The Honourable Mr.Justice P.JYOTHIMANI

Writ Petition Nos.5275, 5276,
5394 and 5395 of 1998

Dr.R.Muralidharan .. Petitioner in W.P.No.5275 of 1998

Dr.Perialwar .. Petitioner in W.P.No.5276 of 1998

Dr.M.Sethuraman .. Petitioner in W.P.No.5394 of 1998

Dr.V.Chidambaranatha Pillai .. Petitioner in W.P.No.5395 of 1998

Vs.

1. State of Tamilnadu,
rep. by its Secretary to Govt.,
Adhi Dravidar & Tribal Welfare
Development Department,
Fort St.George, Chennai-600 009.

2. Tamil University, rep. by
its Registrar,
Thanjavur-613 005. .. Respondents in all the W.Ps.

Writ Petitions filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus after calling for the records from the first respondent in ref.No.G.O.(4D)No.6, quash the order dated 27.3.1998 in so far as the petitioners are concerned and consequently direct the respondents to forbear from transferring the services of the petitioners without his consent to any other institution or authority and award costs.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

For Petitioners: Mr.D.Hariparanthaman
For Respondents: Mr.R.Lakshminarayanan,
Government Advocate for R1
Mr.G.Rajan for R2

O R D E R

These writ petitions are filed challenging the Government Order (4D) No.6, Adi Dravidar and Tribal Welfare Development Department dated 27.03.1998.

2. The petitioners were appointed as Research Assistants in the Department of Tribal Welfare Centre pertaining to the second respondent University which was established at Ootacamund. The said Department was established in the year 1983-84. The Government, by G.O. Ms.No.161, Adidravidar and Tribal Welfare (TD) Department, dated 13.09.1995, has taken over the administrative control of Tribal Research Centre on 13.09.1995. Eventhough the Government has taken the administrative control in respect of the said Department, the Department was well within the second respondent University. In fact, at one point of time, options were asked for, from the Teachers and Research Assistants like that of the petitioners, for which the petitioners have given their option to continue to work in the second respondent University. There are various communications to show that the second respondent University desired to retain the Department by itself, eventhough there were financial commitments. Ultimately, the impugned order came to be passed by the Government by deputing the petitioners and the said Research Assistants from the Tribal Welfare Centre to Government Departments. Based on the impugned Government Order, the second respondent has passed resolution on 28.03.1998. The petitioners challenged the impugned Government Order on various grounds contending that the University Department cannot be taken away by the Government Order, since the Department is created by the statute. In as much as the second respondent University was created by the Tamil University Act of 1982 and the Department of Tribal Welfare Centre was forming part of the University Department, the impugned order by which the Research Assistants like that of the petitioners were sought to be sent on deputation with the Government is not permissible in law. On the other hand, the second respondent University would contend that when once Government passed the impugned G.O., the second respondent is bound to follow the same in as much as the entire administrative control of the Tribal Welfare Centre including the financing was done by the Government and in such circumstance, the second respondent has no other go than following the Government Order. Eventhough it is admitted by the second respondent University

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

that the University is retaining the Department with it, it had to follow the Government Order because of the financial constraint.

3. Mr.Hariparanthaman, learned counsel for the petitioner, placing reliance on the judgment of the Supreme Court rendered in Jawaharlal Nehru University Vs. Dr.K.S.Jawatkar and others, reported in 1989 Supp. 1 SCC Page No.679, would submit that the transfer of an University employee to some other Department cannot make the employee ceased from the University service. The Supreme Court in that case, has held that eventhough transfer has been effected, the transfer will not make the University servant to be other than an University employee.

4. The learned counsel appearing for the petitioners, Mr.Hariparanthaman would also refer to various communications to which the University has been, time and again, making it clear that the Tribal Research Centre should form part of the second respondent University as such. Further, the fact that the petitioners and other Research Assisants have also given options to work in the University, is also not disputed. A reference to the statutes of the second respondent University would show that the post of Research Assistant is an academic post. Further, as seen in Chapter-XX of the statutes of the Tamil University, the Department of Tribal Welfare (Tribal Research Centre) is a Department constituted in the faculty of language within the control of second respondent University. When the Tribal Research Centre has been a constituted Department of the University, it goes without saying that it is only the second respondent University to decide about the closing of the Department in accordance with the provisions of the Tamil University Act, 1982. Therefore on the face of it, the impugned Government Order seeking the transfer of Research Assistants working in the Tribal Research Centre of the second respondent University to some other Department is not valid in law. Admittedly, the University has not passed any resolution for the purpose of closing the Department. On the other hand, a perusal of the entire records would show that consistently, the second respondent has been taking a stand that the Department should be retained with the second respondent and the Research Assistants should also be with it. It is also an admitted fact that after the impugned order came to be passed, this Court has stayed the operation of the order and by virtue of the same, all the petitioners have continued the work in the second respondent University as Research Assistants / Professors in the Department of Tribal Research Centre, out of whom the petitioner in W.P. No.5276 of 1998, Dr.Perialwar having worked as a Professor in the Department, has since retired. It is also relevant to point out that the petitioner in W.P. No.5276 was working as a Professor, who retired on 30.06.2000, while the petitioner in W.P. No.5395

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

of 1998, Dr.V.Chidambaranatha Pillai is also working as a Professor, petitioner in W.P. No.5394 of 1998, Dr.M.Sethuraman is working as a Lecturer and the petitioner in W.P. No.5275 of 1998 Dr.R.Muralidharan is working as Research Assistant, who has also been subsequently posted as a Lecturer. Therefore, admittedly all the petitioners are in the academic side.

5. In addition to what I have stated as the legal position that the impugned Government Order cannot be deemed to have abolished the Department itself, the subsequent developments after filing of the writ petitions also worthy to be mentioned. The Government, by letter dated 06.02.2006 has asked the second respondent University to give its opinion as to whether these petitioners can be permitted to continue to work in the second respondent University itself. It was based on the said letter of the Government, the syndicate of the second respondent University, in its meeting dated 24.02.2006 has resolved requesting the Government to make all the petitioners as employees of the University once again and also requesting the Government to release the funds in respect of the salary and other benefits payable and paid, apart from requesting the Government to reimburse in respect of the pension and other benefits to be payable to its Teachers including that of the petitioners.

6. The learned counsel appearing for the second respondent University would submit that in addition to the records which consistently show that the second respondent has been, at all times, interested in retaining the petitioners and other Professors of the Tribal Research Centre, the Government itself has now accepted to continue the teaching staff and non-teaching staff with the second respondent. Therefore, according to the learned counsel appearing for the petitioners, the said facts were to be recorded while closing the writ petitions. In view of the subsequent developments as stated earlier that the petitioners should be continued to be treated as the employees of the second respondent University, I am of the considered view that no further order is required. However, the legal position as I have stated earlier that any instituted Department of the University cannot be taken over by the Government, is an established law and the same has been confirmed by the Apex Court more than once.

WEB COPY

7. In view of the said legal position, while disposing the writ petitions, there will be a direction to the first respondent Government to consider the position taken by the syndicate of the second respondent University for the purpose of reimbursement of the pensionary and other benefits in respect of the teaching and non-teaching staff working in the Tribal Research Centre and also the payment of salary etc., and pass orders based on the

https://hcservices.ecourts.gov.in/hcservices/

observations made above.

8. With the above direction, the writ petitions stand disposed of with no order as to costs. Consequently, the W.M.P. Nos.8143 of 1998, 8145 of 1998, 8353 of 1998 and 8355 of 1998 are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

km

To

1. The Secretary to Government,
Government of Tamil Nadu,
Adhi Dravidar & Tribal Welfare
Development Department,
Fort St.George, Chennai-600 009.

2. The Registrar,
Tamil University, rep. by
Thanjavur-613 005.

1 cc to the Govt. Pleader, High Court, Madras Sr. 20211
1 cc to Mr.G.Rajan, Advocate, Sr. 20083
4 ccs to Mr.D.Hariparanthaman, Advocate, Sr. 20694

W.P.Nos.5275, 5276, 5394
and 5395 of 1998

SGL (CO)
kk 2/5

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/